

Title: Transforming legal aid: scope, eligibility and merits (civil legal aid) IA No: MoJ194 Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)	
	Date: 05/09/2013	
	Stage: Final	
	Source of intervention: Domestic	
	Type of measure: Secondary legislation	
Contact for enquiries: David Holmes David.Holmes@justice.gsi.gov.uk		
Summary: Intervention and Options		RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	No
			NA

What is the problem under consideration? Why is government intervention necessary?

We are concerned that limited public resources should be targeted at cases that most justify it, ensuring that the public can have confidence in the legal aid scheme. The scheme should be as fair on taxpayers as on legal aid applicants. We consider that it is reasonable that the limited legal aid budget is directed at the cases which really justify public funding by requiring a case to have at least 50% prospects of success in order to warrant public funding. We are also clear that someone should have a strong connection with the UK in order to benefit from civil legal aid.

The Government is responsible for the terms and conditions of access to legal services funded by the legal aid budget; hence government intervention is necessary in order to make any changes.

What are the policy objectives and the intended effects?

The intention is to ensure public confidence in the legal aid scheme by targeting limited public resources at those cases which justify.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following options, in addition to 'do nothing', have been assessed against a base case of 'no change':

Option 1: Introduction of a residency test based on lawful residence at the time of application for civil legal aid and a period of 12 months lawful residence which can have been at any time in the past.

Option 2: Removal of the current provisions which allow certain cases with borderline prospects of success to be funded.

Will the policy be reviewed? We will monitor the impacts of the policy. If applicable, set review date:					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes/No	< 20 Yes/No	Small Yes/No	Medium Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded:	
				Non-traded:	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  Date: 05/09/2013

Summary: Analysis & Evidence

Policy Option 1

Description: Introduction of a residency test based on lawful residence at the time of the application and a period of 12 months lawful residence which can have been at any time in the past.

FULL ECONOMIC ASSESSMENT

Price Base Year NA	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	£0	-
High	-	£1	-
Best Estimate	Negligible	<£1m	<£1m

Description and scale of key monetised costs by 'main affected groups'

Legal Aid Agency (LAA) Administration: the LAA could face an increase in costs due to contract management, case management and auditing providers' assessments of eligibility. The LAA estimate this additional cost to be less than £1m per annum.

Other key non-monetised costs by 'main affected groups'

Legal aid claimants: the number of individuals eligible to claim legal aid will reduce as eligibility is now restricted by a residency test. This is a cost to those individuals that will no longer receive help with their legal costs. Individuals who do not already have evidence of lawful residence may have to pay a fee for a copy of documentary evidence to satisfy the test if they do not have easy access to it.

Civil Legal Aid providers: there is likely to be a fall in demand for their services. Providers would also need to collect evidence that clients meet the residency test and retain copies of this evidence on file for audit purposes.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	-	-
High	Optional	-	-
Best Estimate	N/A	N/Q	N/Q

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

Legal Aid Fund: a reduction in legal aid volumes and expenditure from imposing residency restrictions on civil legal aid.

Key assumptions/sensitivities/risks

Claiming asylum might be seen as the only route to claiming legal aid for some applicants and thus the proposal may increase the volume of those seeking asylum. However, we consider this risk is low, as it is unlikely that, for example, illegal visa overstayers would wish to bring themselves to the attention of the authorities in this way.

There is uncertainty in estimating the impact of introducing a residency test on the volumes of cases. The LAA data does not record the residency status of an application for civil legal aid and therefore does not allow a robust estimate of the number of cases impacted by the introduction of a residency test.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NA	Benefits: NA	Net: NA	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: Amendment of the current provisions which allows certain cases with borderline prospects of success to be funded

FULL ECONOMIC ASSESSMENT

Price Base Year 11/12	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Negligible

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Negligible	£1m	Optional

Description and scale of key monetised costs by 'main affected groups'

Civil legal aid claimants: around 100 borderline cases are expected to be affected a year which will contribute to around £1m per annum saving to the legal aid fund.

Civil Legal Aid providers: providers are likely to experience a fall in demand for their services.

Other key non-monetised costs by 'main affected groups'

LAA: administration costs may increase if the merits test is tightened to remove funding for borderline cases. There are also likely to be ongoing costs primarily due to a potential increase in requests for review to the LAA and appeals to the Independent Funding Adjudicator where claimants do not agree with the prospects of success as assessed.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Negligible	£1m	Optional

Description and scale of key monetised benefits by 'main affected groups'

Legal Aid Fund: removing borderline cases is estimated to reduce the volume of civil legal aid cases by approximately 100 and contribute to saving the legal aid fund approximately £1m per annum.

Other key non-monetised benefits by 'main affected groups'

Wider benefits: It is expected that there will be an increase in public confidence in the legal aid system resulting from the removal of borderline cases from receiving civil legal aid.

Key assumptions/sensitivities/risks

Discount rate (%)

- Applicants no longer eligible for civil legal aid are assumed not to receive legal aid funding through other routes.

- Civil legal aid claimants are assumed to continue to achieve the same case outcomes from non-legally aided means of resolution (e.g. resolve the issue themselves or pay privately to resolve the issue).

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NA	Benefits: NA	Net: NA	No	NA

Evidence Base (for summary sheets)

Introduction

Background

1. This Impact Assessment (IA) accompanies the Ministry of Justice's (MoJ's) consultation on "*Transforming Legal Aid: next steps*". The associated consultation document was published on 5 September 2013 and can be found at: www.justice.gov.uk
2. The legal aid scheme involves the public procurement of legal services and determines the terms and conditions of access to these services. Legal aid fund expenditure was almost £2bn in 2012/13, with around £975m spent on criminal legal aid and £940m spent on civil legal aid¹. The Legal Aid Agency (LAA) is responsible for administering the legal aid scheme in England and Wales.
3. The proposed reforms in this IA relate to those outlined in the April consultation paper. They are summarised below.

Policy Objectives

4. The main policy objective and intended effect is to target limited public resources at civil cases that most justify it, ensuring that the public can have confidence in the legal aid scheme. We consider that it is reasonable that the limited legal aid budget is directed at the cases which most justify public funding by requiring a case to have at least 50% prospects of success in order to warrant public funding. We are also clear that someone should have a strong connection with the UK in order to benefit from civil legal aid.

Policy

5. The policy options considered in this Impact Assessment are as follows:
 - (i) Introduction of a lawful residence test to target civil legal aid at those individuals who have a strong connection to this country.
 - (ii) Amendments to the merits criteria to remove civil legal aid for cases that are assessed as having "borderline" prospects of success.

Main Affected Groups

6. The following key groups are likely to be affected by the proposals:
 - Civil legal aid claimants
 - Civil legal aid providers
 - The LAA, which is responsible for administering legal aid.
 - HMCTS

¹ Rounded to the nearest £5m. Source: <http://www.justice.gov.uk/downloads/publications/corporate-reports/lsc/legal-aid-stats-12-13.pdf>

Costs & Benefits

7. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact on society might be from implementing these proposals. The costs and benefits of each proposal are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are some important aspects that cannot always sensibly be monetised.
8. All savings figures have been rounded to the nearest £1m. All volume changes have been rounded to the nearest 100 cases.

Assumptions

9. The following assumptions have been made in the estimation of the costs and benefits:
 - (i) We assume individuals who no longer receive legal aid will now adopt a range of approaches to resolve issues. They may choose to represent themselves in court, seek to resolve issues by themselves, pay for services which support self-resolution, or decide not to tackle the issue at all. Individuals could choose to pay for private representation, although responses to the consultation suggested that this is unlikely.
 - (ii) We have assumed that there are no other behavioural changes (e.g. in provider behaviour).
 - (iii) The resource used in non-legally aided dispute resolution is assumed to remain the same as the resource currently used.
 - (iv) Civil legal aid claimants are assumed to continue to achieve the same case outcomes from non-legally aided means of resolution.
 - (v) Applicants no longer eligible are assumed not to receive legal aid funding through other routes.
 - (vi) The civil legal aid reforms have been modelled against a flat baseline of 2011/12 closed cases and costs and adjusted for reforms announced in the past but yet to be fully reflected in the data (e.g. the changes introduced through the Legal Aid, Sentencing and Punishment of Offenders Act 2012).

Option 0: Do Nothing

10. Civil legal aid is generally limited to proceedings taking place in England and Wales. There are no residence restrictions on accessing civil legal aid. If the 'do nothing' option were pursued then all cases in England and Wales currently entitled to funding through civil legal aid would continue to be funded by legal aid regardless of the applicant's residency status.
11. At present cases must generally have at least a 50% chance of success to receive civil legal aid funding. However, there is currently provision for certain cases with "borderline" prospects of success to be funded. If the 'do nothing' option were pursued then certain "borderline" cases would continue to attract funding.
12. As this option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1: Introduce a Lawful Residence Test in Civil Legal Aid

Description

13. This option proposes a residency test based on lawful residence in the UK, Crown Dependencies or British Overseas Territories at the time an application for civil legal aid is made and a period of 12 months lawful residence which can have been at any time in the past.
14. We consulted on the basis that certain exceptions to the test would be made. In addition to the exceptions previously proposed for asylum seekers and serving members of HM Armed Forces and their immediate families, we are making a further general exception so that children under 12 months old will not be required to have at least 12 months of previous lawful residence.
15. We are also making exceptions to the test for specific types of cases which currently qualify for civil legal aid. These are cases broadly relating to an individual's liberty, or where the individual is particularly vulnerable or where the case relates to the protection of children. We are also making limited exceptions for certain cases to enable individuals to continue to access legal aid to judicially review certifications by the Home Office under sections 94 and 96 of the Nationality, Immigration and Asylum Act 2002.

Costs

Civil legal aid claimants

16. The introduction of a residency test is expected to reduce the number of individuals eligible to claim legal aid. However, as the LAA do not currently record the residency status of a client it is not possible to estimate the reduction in legal aid volumes that will result from this policy option.
17. Further details on how the residence test will be satisfied will be described in secondary legislation and guidance as appropriate so that the requirements are clear and providers will be clear on what is required of them. Individuals who do not already have evidence of lawful residence may have to pay a fee for a copy of documentary evidence to satisfy the test if they do not have easy access to it. Claimants may also experience a delay in their cases whilst documentation is sought.

Legal Aid Providers

18. Civil legal aid providers are likely to face a fall in demand for their services. However, the precise impact on the provider is dependent upon the behavioural response of the client. This is discussed further in the 'risks and uncertainties' section.
19. There are also one-off familiarisation costs associated with a change in policy. Providers may face increased costs in assessing whether or not a case qualifies for legal aid and in retaining evidence on file for audit purposes.

LAA Administration Costs

20. The one-off costs from the proposed change are expected to be negligible. These costs in the main will be one-off costs relating primarily to amending IT systems to take account of the new arrangements.
21. There are also likely to be small ongoing costs. These costs in the main will be costs relating primarily to contract management, case management and auditing providers' residency assessments. The LAA estimate these costs to be less than £1 million per annum.

Benefits

Legal Aid Fund

22. There is likely to be a reduction in legal aid volumes and expenditure from imposing residency restrictions on civil legal aid, resulting in savings to the legal aid fund. However, as the LAA do not currently record the residency status of a client it is not possible to estimate the reduction in legal aid volumes and therefore the level of savings to the legal aid fund from this option.

Wider benefits

23. It is expected that the introduction of the residence test will have the wider benefit of helping to command public confidence in the civil legal aid system

Risks and uncertainties

24. The precise behavioural response of the client is uncertain. Individuals who no longer receive civil legal aid may choose to address their disputes in different ways. They may represent themselves in court, seek to resolve issues by themselves, pay for services which support self-resolution, pay for private representation or decide not to tackle the issue at all. Individuals could choose to pay for private representation, although responses to the consultation suggested that this is unlikely. Individuals who did not satisfy the residence test would be entitled to apply for exceptional funding under section 10 of LASPO.
25. If individuals no longer eligible for legal aid funding choose to represent themselves this could lead to an increased burden on HMCTS due to a rise in litigants in person. The overall impact is therefore uncertain in the short-term and in the long term it is cost neutral as HMCTS operates on a cost recovery basis.
26. However, it is equally possible that individuals may choose not to tackle the issue at all leading to a reduced workload to HMCTS. The overall impact on HMCTS is therefore uncertain in the short-term and in the long term it is cost-neutral as HMCTS will operate on a cost recovery basis.
27. The resource used in alternative dispute resolutions is uncertain. The resources used to resolve the dispute may change. However this will depend upon the behavioural responses of clients to the policy change which are not known.
28. The client outcomes from alternative dispute resolution are uncertain. Client outcomes may change. However, this will depend upon the behavioural responses of clients to the policy change which are not known.
29. There may be a risk of an increase in the volume of applications in cases claiming asylum as it might be the only route to claiming legal aid for some applicants. However, we consider this risk is low, as it is unlikely that, for example, illegal visa overstayers would wish to bring themselves to the attention of the authorities in this way. We will keep the operation of the asylum seeker exception to the residence test under review, and if it appears to be being abused, we will consider bringing forward secondary legislation to revise the exception.

Enforcement and implementation

30. It is intended that this reform will be introduced, subject to Parliamentary approval, via secondary legislation, to take effect in early 2014.

Option 2: Removing legal aid for borderline cases

Description

31. This option proposes amending the merits criteria to remove civil legal aid for cases that are assessed as having “borderline” prospects of success.

Costs

Civil legal aid claimants

32. Civil legal aid claimants will no longer receive legal aid for approximately 100 borderline cases contributing to a saving of approximately £1m per annum. This is based on 2011/12 LAA (closed case) administrative data, adjusted for the LASPO reforms.
33. Table 1, below, shows the distribution of case type for cases affected by this option. This is based on the 2011/12 LAA (closed case) administrative data. The table shows that the majority of borderline cases in 2011/12 were for either housing (41%) or public law children cases that do not fall within the scope of the Special Children Act (38%).

Table 1: Distribution of case types for cases for borderline cases in 2011/12

Case Type	Proportion
Domestic Violence	8%
Housing	41%
Immigration and Asylum	2%
Private Law Children Act	3%
Other Public Law	8%
Other Public Law Children ²	38%

Source: LAA closed cases in 2011/12, adjusted for LASPO reforms.

Legal Aid Providers

34. Civil legal aid providers are likely to experience a fall in demand for their services. However, the precise impact on the provider is dependent upon the behavioural response of the client. This is discussed further in the 'risks and uncertainties' section.
35. There are also likely to be small familiarisation costs associated with a change in policy.

LAA Administration Costs

36. The one-off costs from the change are expected to be negligible. The costs in the main will be one-off costs relating primarily to amending IT systems to take account of the new arrangements.
37. There are also likely to be small ongoing costs. These costs in the main will be costs relating primarily to a potential increase in requests for review to the LAA and appeals to the Independent Funding Adjudicator.

Benefits

Legal Aid Fund

38. LAA 2011/12 closed case administrative data, adjusted for LASPO reforms, has been used to estimate the benefit of this policy. Removing borderline cases is estimated to reduce the volume of civil legal aid cases by approximately 100 and save the legal aid fund approximately £1m.

LAA Administration

39. If there is a reduction in the number of cases the LAA are required to deal with, then they might realise small administration savings in the long run.

Wider benefits

40. It is expected that that limiting public funding to those cases with at least 50% prospects of success will have the wider benefit of helping command public confidence in the civil legal aid system. It is expected that the introduction of the residence test will have the wider benefit of helping to command public confidence in the civil legal aid system.

² These are public law family matters that do not fall within the definition of the Special Children Act.

Risks and Uncertainties

41. The precise response is uncertain; it is possible that providers may change their behaviour in terms of their assessment on the merits of a case. This could reduce the estimated savings if providers changed their assessment on the merits of a case and this assessment was accepted by the LAA.
42. The precise behavioural response of the client is uncertain. Individuals who no longer receive civil legal aid may choose to address their disputes in different ways. They may represent themselves in court, seek to resolve issues by themselves, pay for services which support self-resolution, pay for private representation or decide not to tackle the issue at all.
43. The resource used in alternative dispute resolutions is uncertain. The resources used to resolve the dispute may change. However this will depend upon the behavioural responses of clients to the policy change which are not known.
44. The client outcomes from alternative dispute resolution are uncertain. Client outcomes may change. However, this will depend upon the behavioural responses of clients to the policy change which are not known.
45. If individuals who are now no longer eligible for legal aid as a result of the tightening of the merits test opt not to pursue their dispute there will be a decrease in civil cases going to court/tribunals, leading to a possible burden reduction to HMCTS. In the short and medium terms the resources freed up may be used to address backlogs elsewhere in the court system rather than being realised as cashable savings. HMCTS operates on a full cost recovery basis over the longer term and any reduction in costs would be associated with a reduction in fee income.
46. However, if individuals choose to represent themselves the rise in litigants in person could place an additional burden on HMCTS. The overall impact on HMCTS is therefore uncertain in the short-term and in the long term it is cost-neutral as HMCTS operates on a cost recovery basis.
47. There may be limited costs to the LAA through a potential increase in investigative representation grants, to allow the provider to gather the necessary information to correctly assess the merits of a case.

Enforcement and implementation

48. It is intended that this reform will be introduced, subject to Parliamentary approval, via secondary legislation in late 2013.